

REMARKS

In the Final Action under reply, the Examiner rejected all of applicants' claims on the ground that the Declaration of David J. Barnes dated June 19, 2002 constituted an admission that products embodying the claimed invention were on sale more than one year prior to the filing of the instant application (page 5 of Action). The Examiner's finding was based on the following statement appearing in the Declaration on page 2, paragraph 2:

"The second group of documents (Exhibit B, four sheets) constitutes a collection of records relating to the subsequent commercial production and clearance of the dietary supplement disclosed and claimed in the application. They reveal that the product went into commercial production on October 7, 1997 and was packaged and approved for sale on that date."

Applicants submit that the Examiner has misconstrued the statements in the Declaration. The documents appended to the Declaration show that indeed the necessary approvals occurred on October 7, 1997 and that the product (ProVantage) went into production on that same date. However, no sales or offers for sale, and no public use of the invention, occurred until later after inventory had been built up, the necessary literature prepared, and an official launch or rollout had taken place. The rollout date was Saturday, October 25, 1997 in a meeting for distributors in San Francisco. At that time the new ProVantage product was unveiled, literature handed out, and the product was first offered for sale.

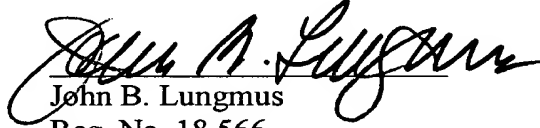
For purposes for clarification, applicants submit herewith a Supplemental Declaration of David J. Barnes. The Supplemental Declaration and accompanying documents make it clear that the ProVantage product was not offered for sale and did not become known by the public until October 25, 1997, a date well within the one-year period prior to applicants' filing date.

In view of the above, entry of this Response and the accompanying Supplemental Declaration into the file of this application is respectfully requested. Even if the Examiner,

Appl. No. 09/175,748
Response dated November 6, 2003
Reply to Final Action mailed July 1, 2003

upon consideration of the above arguments and the statements in the Supplemental Declaration, finds none of applicants' claims to be allowable, entry of this Response and Supplemental Declaration is nevertheless requested because they would both clarify and simplify the issues on appeal.

Respectfully submitted,


John B. Lungmus
Reg. No. 18,566

Date: November 6, 2003

Marshall, Gerstein & Borun LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, IL 60606-6357
Phone: (312) 474-6300
Fax: (312) 474-0448